

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brady R. Dow	
Application No.: 10/091,651	Examiner: Behrang Badii
Filed: March 5, 2002	Art Unit: 3621
For: SYSTEMS AND METHODS FOR DEPLOYING AND UTILIZING A NETWORK OF CONVERSATION CONTROL SYSTEMS	Confirmation No.: 9164

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RESPONSE TO SUPPLEMENTAL EXAMINER'S ANSWER

Sir:

Applicant (hereafter "Appellant") herby submits this response to the Supplemental Examiner's Response, mailed December 9, 2008, in the above-captioned application. Appellant respectfully requests consideration of this Appeal by the Board of Patent Appeals and Interferences (the "Board") for allowance of all claims of the above-captioned patent application.

The claims of the above-captioned application have been twice rejected by the examiner based originally upon an improper combination of references and without consideration of each and every element of the claims. Since the appeal was originally lodged, the claims have been additionally rejected based upon a rejection under 35 USC 112, paragraph 2; and now fully two years after the original appeal was filed, the claims have been additionally rejected under 35 USC 101. Hence, this appeal is ripe, and Appellant's Brief in support of this appeal follows.

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REAL PARTY IN INTEREST

The real party in interest in this Appeal is Kombea Corporation, the assignee of all rights to the invention disclosed in the present application. The assignment of the inventors' rights to Kombia LLC was recorded in the United States Patent and Trademark Office on February 27, 2006, at Reel 017219, Frame 0821; and from Kombia LLC to Kombea Corporation was recorded in the United States Patent and Trademark Office on February 27, 2006, at Reel 017219, Frame 0797.

RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences related to this Appeal.

STATUS OF CLAIMS

Claims 1 and 5 were previously cancelled.

Claims 2-4 and 6-25 are currently pending in the above-captioned application, and are the subject of this appeal. Of these claims, claims 3, 8, 10, 11, 13 and 15-23 are as originally filed. Claims 2, 4, 6, 7 and 9 were amended by the Amendment of 1/25/05 to change the base claim from which they depend; claim 12 was amended by the Amendment of 1/25/05, the Amendment of 6/22/2005 and the Amendment of 9/14/2005; claim 14 was amended by the Amendment of 6/22/2005 and the Amendment of 9/14/2005; and claims 24 and 25 were added in the Amendment of 1/25/2005, and amended by the Amendment of 6/22/2005 and the Amendment of 9/14/2005.

Appeal was taken from the Final Office Action mailed 12/5/2005 (the “Latest Substantive Office Action”) that: (1) rejected claims 2-4, 6-8, 12-17, 20, 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,731,609 (“Hirni”) in view of U.S. Patent No. 6,722,989 (“Hayashi”); (2) rejected claims 9-11 under 35 U.S.C. §103(a) as being unpatentable over Hirni in view U.S. Patent No. 6,607,136 (“Astman”); and (3) rejected claims 18-19 under 35 U.S.C. §103(a) as being unpatentable over Hirni in view U.S. Patent No. 6,748,055 (“Borman”).

In response to the originally filed appeal brief, the examiner re-opened prosecution by issuing an Office Action mailed September 25, 2006 (the “Reopened Prosecution Action”) where the examiner (1) rejected claims 12, 24 and 25 under 35 U.S.C. §112, paragraph 2 because the claims are “replete with errors” with “some examples to follow”; and maintained the earlier position (2) rejecting claims 2-4, 6-8, 12-17, 20, 24 and 25 under 35 U.S.C. §103(a) as being

unpatentable over U.S. Patent No. 6,731,609 (“Hirni”) in view of U.S. Patent No. 6,722,989 (“Hayashi”); (3) rejecting claims 9-11 under 35 U.S.C. §103(a) as being unpatentable over Hirni in view U.S. Patent No. 6,607,136 (“Astman”); and (3) rejecting claims 18-19 under 35 U.S.C. §103(a) as being unpatentable over Hirni in view U.S. Patent No. 6,748,055 (“Borman”).

Now, more than three years after the Latest Substantive Office Action that initiated this appeal, the examiner has additionally rejected claims 6-11, 12-23 and 25 under 35 USC 101 by way of an Supplemental Examiner’s Answer (hereafter “Supplemental Answer”). Further, the examiner expands his rejection under 35 U.S.C. §112, paragraph 2, without explanation to include claims 12-23, 24, 2-4, 25 and 6-11.

Again, claims 2-4 and 6-25 as set forth in the Latest Substantive Office Action of 2005, are the subject of this Appeal.

STATUS OF AMENDMENTS

No amendment has been filed subsequent to the Latest Substantive Office Action which rejected claims 2-4 and 6-25. A copy of all claims on appeal is attached hereto in the Appendix of Claims.

SUMMARY OF CLAIMED SUBJECT MATTER

A. Overview

The systems and methods disclosed in the present application generally relate to call center technology. Such call center technology may be used, for example, at a location where an operator receives and responds to requests for help relating to a purchased product. In some embodiments of the present invention, the technology provides a novel ability to allow a human operator to monitor/govern a pseudo-conversation via a particular machine that enforces a precise, well-thought and comprehensive approach to call center processing.

In some embodiments of the invention, two or more conversation control systems incorporating a plurality of scripts are combined to form a network of conversation control systems. See e.g., Specification at Fig. 7, ¶¶ 120-127 (p. 24, l. 24 – p. 26, l. 21). The scripts incorporated with the conversation control systems may be, for example, pre-recorded response or suggestions logically grouped in an approach. See e.g., Specification at Fig. 1B, ¶¶ 39 and 47 (p. 7, ll. 6-14 and p. 9, ll. 13-25). Such approaches may be, for example, particularly tailored as presentations for eliciting information from and providing information to a customer in a controlled fashion. See e.g., Specification at Fig. 1B, ¶¶ 36-38 (p. 6, l. 12 - 7, l. 5).

Using a conversation control system, a human operator may receive a call via telephone or other verbal communication device from, for example, a customer (i.e., recipient) that has purchased a particular product and is looking for technical help. Upon receiving the call, a script may be initiated by the human operator that performs a script item that says, for example, “Hello, thank you for calling XYZ company customer service – How may I direct your call?” See e.g., Specification at Fig. 1B, ¶ 96 (p. 20, ll. 16-23). As expressly set forth in the specification, scripts

are an assemblage of script items, and the script items are message segments maintained that are to be presented to a customer as a voice. Specification at Fig. 1B, ¶ 39 (p. 7, ll. 6-14). The human operator would then receive the customer's response and select an approach that is appropriate for the call. Thus, for example, if the customer asked for help in relation to a particular product, the human operator could select an approach that includes script items (e.g., questions and responses) designed to elicit questions and provide answers in relation to the particular product. The human operator could then select various of the script items to govern a verbal interaction with the customer where the conversation control system is providing the verbal responses to the customer at the direction of the human operator. In this way, the intellect and reasoning ability of the human operator may be used to provide an intelligent flow to the conversation with the conversation control system delivering proven responses to the customer. See e.g., Specification at Fig. 1B, ¶ 142 (p. 29, ll. 17-24). Thus, a customer may be provided with a verbal interaction that seems to be a real person without the limitations of a real person. As one particular application, a human operator that has a difficult accent may be used to interpret the requests of a customer and the conversation control system can be used to communicate with the customer using pre-recorded scripts that do not exhibit the difficult accent of the human operator. See e.g., Specification at Fig. 1B, ¶ 97 (p. 20, ll. 24-29). Another exemplary approach including a group of script items presented in an order directed by a human operator is discussed in paragraphs 101-112 (p. 21, l. 17 – p. 22, l. 19) of the specification.

As just some of the many benefits achievable using one or more embodiments of the present invention, a company is provided with control and consistency of every call even though calls are handled by different operators, eradication of accent problems with calls, exact repetition of legal disclosures, controls ensuring call flow is strictly adhered to and all required call elements are covered, absolute tracking of every call and every call element, and/or precision

analysis of the impact of each call element as the prerecorded speech is precisely the same with each caller. See e.g., Specification at Fig. 1B, ¶ 143 (p. 29, l. 25 – p. 30, l. 2).

As another example involving a conversation control system, the system may be employed in handling calls from the customers of a credit card provider. Taking the various elements from a number of previously received calls, various scripts may be created to address such items as, but not limited to, card activation, balance transfers, credit limit increase, lost/stolen credit card, stop payment. It may be that hundreds of earlier calls may be utilized to form a desired script. Based on this input, each response, question and statement included in the script may be recorded as a separate call element linked together to various groupings to create the appropriate call flow for each sub-element of any call. Each various element being a branch of the overall call. The recording may, for example, be done using whichever voice, accent or language is desired to provide the effect wanted. The linked prerecorded call elements may then be saved to a database to be accessed by the operator depending on which calls the operator is scheduled to accept. Certain keys or combinations on the operator's computer keyboard may be designated as hot keys that are used to trigger speech elements that are repetitive in normal conversation such as, "yes", "no", "uh-huh", "great", "I'm doing fine", "what's your account number", "could you repeat that", "I didn't understand that", "I'm sorry", and "I didn't get that", or the like. The operator's computer may also have a call tree showing the progress of a script that allows the agent to see where he currently is in call process and to jump between points in the call conversation as needed, thus simulating the ability in normal conversation to jump between topics.

B. Independent Claim 24 (from which claims 2-4 depend)

Independent Claim 24 (from which claims 2-4 depend) provides networks of conversation control systems. Such networks of conversation control systems include, *inter alia*, at least two conversation control systems each communicably coupled to a central control. (*see, as just one example*, Specification at Fig. 7 elements 110, 450). Each of the conversation control systems are accessible to a human operator and is capable of receiving input from a human operator. (*see, as just one example*, Specification at Fig. 1A elements 105, 185). Further, each of the conversation control systems include a plurality of script items formed in a presentation. (*see, as just one example*, Specification at ¶¶ 63-65, p. 12, ll. 3-20). Among other things, the input from a human operator is used to select one of a plurality of script items. (*see, as just one example*, Specification at ¶ 47, p. 9, ll. 13-25). The selected script item is then performed to the recipient. (*see, as just one example*, Specification at ¶ 100, p. 21, ll. 10-16). In some cases, each of the conversation control systems includes a set of components that are downloaded to the respective conversation control system from the central control. (*see, as just one example*, Specification at ¶ 128, p. 26, ll. 22-32).

Claim 2 further sets forth an initiator communicably coupled to the central control. See e.g., Specification at Fig. 9.

Claim 3 identifies the initiator as a predictive dialer. See e.g., Specification at ¶0148.

Claim 4 further sets forth providing components from a central control to two or more conversation control systems. See e.g., Specification at Fig. 9, ¶0137.

C. Independent Claim 25 (from which claims 6-11 depend)

Independent claim 25 (from which claims 6-11 depend) provide methods for providing information to one or more recipients. Such methods include, *inter alia*, providing at least two conversation control systems. (*see, as just one example*, Specification at Fig. 7 elements 110). Each of the conversation control systems is associated with a computer readable medium that includes a plurality of preformed script items. (*see, as just one example*, Specification at ¶¶ 63-65, p. 12, ll. 3-20). The methods further include providing an initiator, and communicating with the initiator such that a human recipient is contacted. (*see, as just one example*, Specification at ¶ 130, p. 27, ll. 4-9). One of the conversation control systems is selected to interact with the human recipient. (*see, as just one example*, Specification at ¶ 132, p. 27, ll. 16-20). An indication of one of the plurality of preformed script items is received from a human operator, and communicated with the recipient via the selected conversation control system. (*see, as just one example*, Specification at ¶ 100, p. 21, ll. 10-16). In some cases, each of the conversation control systems include a set of components that are updated to the respective conversation control system from the central control. (*see, as just one example*, Specification at ¶ 128, p. 26, ll. 22-32). In some cases, the methods further include determining whether a component on one of the conversation control systems is less recent than a component on the central control. (*see, as just one example*, Specification at ¶ 139, p. 28, ll. 27-32). The communication with the recipient can include receiving an audio signal from the recipient, and outputting another audio signal to the recipient via a speaker. This may include converting an audio file to an audio signal.

Claim 6 identifies the initiator as a predictive dialer. See e.g., Specification at ¶0148.

Claim 7 sets forth a central control where components for use by different conversation control systems are maintained. See e.g., Specification at ¶¶0151-0153.

Claim 8 sets forth determining that a component on one conversation control systems is less recent than a component on a central control. See e.g., Specification at ¶¶0151-0153.

Claim 9 sets forth a conversation control system including at least a computer and database, a speaker and an input device. See e.g., Specification at Fig. 1A.

Claim 10 sets forth reception of an audio signal from a recipient that is then output from a speaker. See e.g., Specification at Fig. 2B, ¶0108.

Claim 11 sets forth receiving a selection from a user of the conversation control system that designates an audio file, and converting the audio file to an audio signal that is provided to the recipient. See e.g., Specification at ¶¶0109-0113.

D. Independent Claim 12 (from which claims 13-23 depend)

Independent claim 12-23 provide methods for controlling a network of conversation control systems. Such methods include, *inter alia*, initiating contact with a human recipient via an initiator. (*see, as just one example*, Specification at ¶ 130, p. 27, ll. 4-9). The methods further include selecting a conversation control system that is accessible to a human operator; and routing information received from the human recipient to the conversation control system. (*see, as just one example*, Specification at ¶ 132, p. 27, ll. 16-20). The methods further include outputting the information received from the human recipient in the form of an audio communication via an output device of the conversation control system to the human operator (*see, as just one example*, Specification at Fig. 10A). The methods further include receiving an indication from the human operator of a preformed script item to respond to the information received from the human recipient,

and the script item is presented to the human recipient. (*see, as just one example*, Specification at ¶ 100, p. 21, ll. 10-16). In comes cases, an indication of a script is received, and the script item is a step of the script. (*see, as just one example*, Specification at ¶ Fig. 1B, ¶ 39, p. 7, ll. 6-14). In various cases, an indication of a presentation is received that is a logical combination of script items. (*see, as just one example*, Specification at ¶ 37, p. 6, ll. 23-29). The indicated presentation may be a voice presentation and/or a presentation in the recipient's language that may not be the language of the person operating the selected conversation control system. (*see, as just one example*, Specification at ¶ 82, p. 16, ll. 30-35). The voice in the voice presentation may be a particular person's voice. (*see, as just one example*, Specification at ¶0088, p. 18, ll. 16-25).

Claim 13 additionally provides for receiving an indication of a script item that is associated with a step of the script. See e.g., Specification at ¶0038.

Claim 14 additionally provides for receiving an indication of a presentation that controls the form that the script item is presented to the recipient. The presentation is a logical combination of script items. See e.g., Specification at ¶0041. Claim 15 identifies the presentation as a voice presentation. See e.g., Specification at ¶0041. Claim 16 identifies the voice presentation as the voice of a particular person. See e.g., Specification at ¶0041. Claim 17 indicates that the voice of the particular person is pre-recorded. See e.g., Specification at ¶0041.

Claim 18 identifies the presentation as the recipient's language. See e.g., Specification at ¶0102. Claim 19 identifies the recipient's language as distinct form the user's language. See e.g., Specification at ¶0102.

Claim 20 identifies the initiator as a predictive dialer. See e.g., Specification at ¶0148.

Claim 21 sets forth a plurality of conversation control systems and provides that selecting one of the conversation control systems involves selecting one of the plurality of conversation

control systems that is not currently in use. See e.g., Specification at Fig. 7, ¶0. Claim 22 sets forth a plurality of conversation control systems and provides that selecting one of the conversation control systems involves selecting one of the plurality of conversation control systems that is about to terminate use. See e.g., Specification at Fig. 5. Claim 23 sets forth a plurality of conversation control systems and further includes providing a central control that is capable of effectuating selection between the plurality of conversation control systems. See e.g., Specification at Fig. 5.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 12-23, 25 and 6-11 are improperly rejected under 35 USC § 101.
2. Whether claims 12-23, 24, 2-4, 25 and 6-11 satisfy the requirements of 35 U.S.C. § 112, paragraph 2.
3. Whether the cited art either separate or in combination discloses, teaches or suggests the use of preformed script items maintained as part of a particular machine that are selected by one human and presented to another human by the particular machine as part of an interactive communication?
4. Whether the cited art either separate or in combination discloses, teaches or suggests the use of a script or approach formed including a logical combination of preformed script items to deliver an interactive communication?
5. Whether the cited art either separate or in combination discloses, teaches or suggests the use of a script designed to control the format of an interactive communication?
6. Whether Hayashi is properly combinable with Hirni in any way that renders claims 2-4 and 6-25 unpatentable?

ARGUMENTS

For the purposes of this argument appeal the following claim groupings are utilized:

GROUP I All claims

GROUP II Claim 14 and all claims dependent therefrom

GROUP III Claims 12-23, 25 and 6-11

ARGUMENT A (ADDRESSING THE CLAIMS OF GROUP III) – CLAIMS 12-23, 25 AND 6-11 ARE IMPROPERLY REJECTED UNDER 35 USC § 101, AND THE CLAIMS AT ISSUE ARE PATENTABLE

In the Supplemental Answer, the examiner sets forth a statement apparently derived from the “Office’s guidance” that a “process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter . . . and [i]f neither of these requirements is met by the claim, the method is not a patent eligible process under 101.” Supplemental Answer at p. 4. While Appellant does not refute this legally derived statement, Appellant notes that the examiner utterly fails, as with his earlier rejection under 35 USC § 112, to apply this statement to the claims at issue and thereby provide a meaningful rejection. In particular, the examiner does not in any way discuss the various particular apparatus including the conversation control system and the initiator that are intimately incorporated in one or more of the methods set forth in the rejected claims. As such, it is impossible to discern why it is that the examiner considers the claims outside the scope of 35 USC § 101, and to respond in a way that addresses his concerns. Rather, the examiner’s unsupported rejection of all method claims at

issue exhibits an apparent position that the cited internal guidance of the US Patent and Trademark Office demands that *all method* claims are subject to rejection under 35 USC §101. Such is, of course, completely inconsistent with *In re Bilski*, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008) that recently reaffirmed that there is no categorical exclusion of method claims. If the examiner is relying on internal guidance to support his position, Appellant respectfully requests that the guidance be made part of the record in this appeal so that the Appellant is afforded its Constitutionally required notice and opportunity to respond.

Consistent with *In re Bilski*, claim 12 is clearly allowable under 35 USC §101 as it is tied to not only one, but two particular apparatus, a conversation control system and an initiator. The conversation control system includes at least a computer and a computer readable medium. Specification at ¶0047. The computer readable medium includes at least one preformed script item that may be selected and presented by the conversation control system as a pseudo-conversation. Specification at ¶0049. The preformed script may be, for example, pre-recorded response or suggestions logically grouped in an approach. See e.g., Specification at Fig. 1B, ¶¶ 0039 and 0047. This conversation control system facilitates a controlled pseudo-conversation between a human operator and a human recipient where, for example, the recipient receives verbal interaction from the conversation control system that may seem to be received from a real person, but without problems caused by the limitations of a real person. As one particular application, a human operator that has a difficult accent may be used to interpret the requests of a customer and the conversation control system can be used to respond to the customer using pre-recorded scripts that do not exhibit the difficult accent of the human operator. See e.g., Specification at Fig. 1B, ¶ 97 (p. 20. ll. 24-29). The initiator is operable to connect the conversation control system with a recipient by, for example, a telephone network. See e.g., Specification at Fig. 9, ¶0144.

The conversation control system and the initiator, either separately or in combination, set forth a particular apparatus. As such, under *In re Bilski*, claim 12 is allowable under 35 USC § 101. Hence, Appellant respectfully requests withdrawal of the rejection and allowance of claim 12.

Claims 13-23 are each tied to the particular apparatus of claim 12 and are thus allowable for at least this reason. In claim 13, the particular apparatus receives an indication of a script. In claim 14, the particular machine receives an indication of a presentation that is a logical combination of script items. Claims 14-17 provide additional details of the preformed script item maintained as part of the particular machine. Claims 18-19 provide additional details provide additional details of the presentation maintained as part of the particular machine. Claim 20 further defines the initiator as a predictive dialer.

Independent claim 25 includes two conversation control systems and an initiator – any of which would qualify as a particular apparatus and thereby satisfy 35 USC § 101. Accordingly, Appellant respectfully requests withdrawal of the rejection and allowance of the claim for at least this reason. Claims 6-11 are each tied to the particular apparatus(s) of claim 25 and are thus allowable for at least this reason.

ARGUMENT B (ADDRESSING THE CLAIMS OF GROUP I) – SIMILAR TO THE EARLIER REJECTIONS UNDER 35 U.S.C. §103, THE NEWLY STATED REJECTIONS UNDER 35 U.S.C. §112, PARAGRAPH 2 ARE UNSUPPORTABLE AND THE CLAIMS AT ISSUE ARE PATENTABLE

Appellant respectfully points out that when making a rejection under 35 U.S.C. §112, the examiner must provide “a full explanation of the deficiency of the claims”. MPEP § 706.03(d).

In no event should such a rejection be made “if the scope of the claimed subject matter can be determined by one having ordinary skill in the art”. Id. Determining what meaning one of ordinary skill in the art would be expected to attribute to a claim requires at least a cursory review of relevant parts of the specification. See e.g., Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (“Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification”).¹ Accordingly, before an examiner identifies a claim as indefinite under 35 U.S.C. §112, it would be expected that the examiner would have made at least some consideration of the specification. In this case, the examiner candidly admitted he had not.² Appellant respectfully asserts that without even considering the specification, the claims at issue would be definite to one of ordinary skill in the art; and that upon review of the specification, the definiteness of the claims would be further supported. Accordingly, the Appellant respectfully requests withdrawal of the rejections under 35 U.S.C. §112 and allowance of the claims.

In earlier reopening prosecution, the examiner maintained all of the earlier rejections without addressing any of Appellant’s earlier arguments, and justified reopening prosecution solely based on an unsupportable position that claims 12, 24 and 25 fail to satisfy the requirements of 35 U.S.C. §112, paragraph 2. In so doing, the examiner did not point out why the claims are indefinite under the statute, but rather simply made up his own internal standard

¹ It is interesting to note that in a recent *non-precedential* opinion, the Federal Circuit noted that the US Patent and Trademark Office is under the same obligation to construe claims in light of the specification. See In re Wheeler (Fed. Cir. 2008)(non-precedential) (“Although claims during examination are given their broadest reasonable interpretation in order to facilitate precision in claiming, that interpretation must be “consistent with the specification, [and] claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.”) quoting In re Bond, 910 F.2d 831, 833 (Fed. Cir. 1990).

² In the telephonic interview carried out between the examiner and the Appellant on October 24, 2006, the examiner candidly admitted that he had not read the originally filed specification and argued that he was only required to

identifying the claims as “replete with errors” while citing “some examples”. The vagueness of the examiner’s rejection prompted a telephonic interview of October 24, 2006 where Appellant asked the examiner to explain the basis for the rejection. In response, the examiner could not offer any supportable explanation, but rather simply stated that he was told to make the rejection by the supervising examiners that met with him in the appeal conference of September 13, 2006. Interview Summary of 10/30/06³. Such a conclusory directive is simply insufficient to maintain the rejection, and is indeed improper as it leads to nothing more than piecemeal prosecution where it appears that the earlier submitted arguments were not even considered by the examiner or the supervisors meeting in the appeal conference of September 13, 2006. See e.g., MPEP at 707.07(g).

In the Supplemental Answer, the examiner reiterates his rejection of claims 12-23, 24, 2-4 and 6-11 under 35 USC §112, while at the same time deftly submerging his previously stated standard of “replete with errors” as:

- I. It is unclear who is initiating the contact.
- II. It is unclear as to who is the human recipient? Is this a customer? Is the recipient a call center employee?
- III. How is the recipient sending information if he/she is by definition a recipient?

None of the aforementioned questions identify “errors” disputable under 35 U.S.C. §112, paragraph 2, and as such Appellant respectfully traverses all of the rejections under 35 U.S.C. §112, paragraph 2.

review the claims at issue, and that neither of the supervising examiners had reviewed the specification. See Examiner Interview Summary of 10/30/06.

³ It should be noted that the Examiner later filed another Interview Summary that has some errors. In particular, the Examiner notes that no demonstration was performed, and that Brady Dow was present. Rather, a demonstration

First, the examiner takes a position that the claims are indefinite under 35 U.S.C. § 112, paragraph 2 because it is unclear who is initiating the contact. Appellant respectfully disagrees. As set forth in the specification, a conversation control system facilitates a two way communication where information (e.g., but not limited to, verbal communications) are passed from a human recipient to a human operator, and corresponding information (e.g., but not limited to, a verbal response) is passed from conversation control system to the human recipient using input from the human operator. See e.g., Specification at ¶¶108-112. Satisfying 35 U.S.C. § 112 in claiming such systems, devices and/or methods does not require identification of who or what initiates the two way communication. The communication may be initiated by the human operator, the human recipient, an electronic initiator such as a predictive dialer or any other mechanism capable of placing the human operator in communication with the human recipient. See e.g., Specification at ¶¶106-107. Identifying the person or device initiating the contact simply does not make the claims more or less definite to one of ordinary skill in the art.

Second, the examiner takes a position that the claims are indefinite under 35 U.S.C. § 112, paragraph 2 because it is unclear as to who is the human recipient. In so doing, the examiner seems to suggest that the sex, race, height and all other attributes of a human recipient must be identified before a claim could pass muster under his unpublished 112 criteria. This is, of course, pure nonsense. As set forth in the specification, a conversation control system facilitates a two way communication where information (e.g., but not limited to, verbal communications) are passed from the human recipient to the human operator, and corresponding information (e.g., but not limited to, a verbal response) is passed from conversation control system to the human recipient using input from the human operator. See e.g., Specification at

was performed by Arthur Coombs, and Brady Dow was not present. These facts, however, are not directly relevant to the merits of this application.

¶¶108-112. Satisfying 35 U.S.C. § 112 in claiming such systems, devices and/or methods does not require identification of personal attributes of either the human operator or the human recipient. Thus, in response to the examiner's concern, the recipient could be, for example, a customer, a call center employee, a truck driver, a homemaker, a man, a woman, or, for that matter, any human. The term "human recipient" conveys this to in of ordinary skill in the art, and the specification reinforces it.

Finally, the examiner takes a position that the claims are indefinite under 35 U.S.C. § 112, paragraph 2 because it is unclear how the recipient is sending information if he/she is by definition a recipient. As set forth in the specification, a conversation control system facilitates a two way communication where information (e.g., but not limited to, verbal communications) are passed from the human recipient to the human operator, and corresponding information (e.g., but not limited to, a verbal response) is passed from conversation control system to the human recipient using input from the human operator. See e.g., Specification at ¶¶108-112. In a two way communication between a recipient and an operator, it would be expected that information would pass both to and from the recipient. The term recipient is used consistent with this in the specification and, indeed, would be obvious to anyone of ordinary skill in the art upon reading the specification. Use of the term recipient denotes the fact that the recipient receives information produced by the conversation control system, but does not preclude the recipient from providing information as part of the two way communication. See e.g., Specification at ¶¶108-112. The claim satisfies the requirements under 35 U.S.C. §112, paragraph 2 as to who is receiving information and who is providing information.

Again, none of the aforementioned questions identify "errors" disputable under 35 U.S.C. §112, paragraph 2. As such, Appellant respectfully requests withdrawal of the rejections under 35 U.S.C. § 112 and allowance of the claims.

ARGUMENT C (ADDRESSING THE CLAIMS OF GROUP I) – THE CITED ART EITHER SEPARATE OR IN COMBINATION FAILS TO DISCLOSE, TEACH OR SUGGEST THE USE OF PREFORMED SCRIPT ITEMS MAINTAINED AS PART OF A PARTICULAR MACHINE THAT ARE SELECTED BY ONE HUMAN AND PRESENTED TO ANOTHER HUMAN BY THE PARTICULAR MACHINE AS PART OF AN INTERACTIVE COMMUNICATION

Independent claims 12, 24 and 25 each include a limitation involving the selection of a preformed script item by a human operator via a conversation control system, and the selected script item is later presented to a human recipient. As discussed in the specification, a script item is “a message segment that is [to be] presented to a recipient.” Specification at ¶ 39. Thus, the claims provide systems and methods whereby a conversation control system facilitates interaction through allowing a human operator to select a message segment that is then presented by the conversation control system to a human recipient. By allowing a human operator associated with the conversation control system to select a script item, rather than simply responding directly, a pseudo conversation will more likely conform to desired standards.

In stark contrast, Hirni does not disclose, teach or suggest selection from preformed script items. Rather, Hirni merely discloses a telephonic system that is capable of facilitating communications across a packet based network. Hirni at abstract, col. 1, ll. 59-64. Thus, Hirni discloses what has become commonly referred to as a Voice Over Internet Protocol (VOIP) system. Such systems, like the standard telephone systems that have existed for over one hundred years, provide a facility that allows users to freely communicate one with another, and without interference with the content of such communication. Such systems do not provide

performed script items that control the content of an ongoing communication. Hence, Hirni does not anticipate any of the claims in GROUP I.

The examiner correctly noted that Hirni fails to disclose, teach or suggest the use of script items as set forth in the claims of GROUP I. Latest Substantive Office Action at p. 3 (discussing claim 24). To overcome the admitted limitation of Hirni, the examiner alleged that Hayashi discloses script items. Id. In addition, the examiner sets forth an unsupportable conclusion that “[i]t would have been obvious to modify Hirni et al. to include scripts items formed in a presentation such as that taught by Hayashi in order to allow the user to choose a response such that the conversation can be directed in a particular way, along a particular route to come to a certain conclusion.” Id.

It should be noted that the combination of Hirni and Hayashi is not proper as more fully discussed below. However, even if the combination was proper, which it is not, the combination fails to disclose, teach or suggest selection of a script by a human operator followed by presentation of the script to a human recipient by the conversation control system. In particular, Hayashi discloses a device whereby a user of the device interacts with the device to train a “virtual pet” on the meaning of particular words. Hayashi at abstract. The learned word can then be placed in a canned sentence at a predefined “blank” for repetition. Hayashi at col. 16, l. 62 – col. 17, l. 11. Thus, Hayashi is not able to perform a communication between two humans as required by the claims, but rather only a game between one human and the game. Further, it is not a human that selects the script item, but rather the game. Again, this is not an approach that could be used to provide an intelligible conversation between two humans.

In stark contrast, Applicant’s claims provide for an interaction between a human recipient and a human operator whereby the human operator selects a preformed script to be presented to the human recipient. Thus, as Hayashi fails to teach, disclose or suggest the limitation

admittedly not taught by Hirni, Applicant respectfully requests withdrawal of the rejection and allowance of the claims in GROUP I for at least this reason.

ARGUMENT D (ADDRESSING THE CLAIMS OF GROUP II) – THE CITED ART EITHER SEPARATE OR IN COMBINATION FAILS TO DISCLOSE, TEACH OR SUGGEST THE USE OF A SCRIPT OR APPROACH FORMED INCLUDING A LOGICAL COMBINATION OF PREFORMED SCRIPT ITEMS TO DELIVER AN INTERACTIVE COMMUNICATION

Claim 14 includes “receiving an indication of a presentation [that] is a logical combination of script items.” This presentation type is referred to in the specification as an approach which is a combination of one or more script items assembled in a way that leads to a desired conversational result and may be formed to anticipate various branches that a conversation related to the presentation may take. Specification at ¶¶ 37-38. Thus, the method set forth in claim 14 provides for receiving an indication of a particular presentation to be used. In addition, a human operator interacts with a conversation control system to select scripts from the presentation which are then presented by the conversation control system to a human recipient. By providing such a presentation and allowing a human operator associated with the conversation control system to select a script item, rather than simply responding directly, an approach carried out by the human operator will more likely to conform to desired standards.

As correctly admitted by the examiner, Hirni does not even disclose, teach or suggest selection from preformed script items, let alone combinations of preformed script items. Latest Substantive Office Action at p. 3 (discussing claim 24). Hence, Hirni does not anticipate claim 14. The examiner relies on the disclosure of Hayashi for this teaching. However, Hayashi fails to disclose, teach or suggest a presentation or an indication of a presentation designed to direct a

conversation to a particular end goal. In particular, Hayashi discloses a device whereby a user of the device interacts with the device to train a “virtual pet” on the meaning of particular words. Hayashi at abstract. The learned word can then be placed in a canned sentence at a predefined “blank” for repetition. Hayashi at col. 16, l. 62 – col. 17, l. 11. Thus, Hayashi is not able to perform a communication between two humans as required by the claims, but rather only a game between one human and the game. Further, it is not a human that selects the script item from the presentation, but rather the game. Again, this is not an approach that could be used to provide an intelligible conversation between two humans.

Thus, as Hayashi fails to teach, disclose or suggest the limitation admittedly not taught by Hirni, Applicant respectfully requests withdrawal of the rejection and allowance of the claims in GROUP II for at least this reason.

ARGUMENT E (ADDRESSING THE CLAIMS OF GROUP II) – THE CITED ART EITHER SEPARATE OR IN COMBINATION FAILS TO DISCLOSE, TEACH OR SUGGEST THE USE OF A SCRIPT DESIGNED TO CONTROL THE FORMAT OF AN INTERACTIVE COMMUNICATION

Claim 14 includes “receiving an indication of a presentation [that] controls the form that the script item is presented to the recipient . . .” This presentation type is referred to in the specification as a script that controls the format of a conversation presented. For example, the format may be the tone in which the scripts are presented such as, for example, an aggressive sales approach verses a soft sell. Specification at ¶¶ 37-38. Thus, the method set forth in claim 14 provides for receiving an indication of a particular format that is to be used in the conversation.

As correctly admitted by the examiner, Hirni does not even disclose, teach or suggest selection from preformed script items, let alone the ability to set the format of a combinations of preformed script items. Latest Substantive Office Action at p. 3 (discussing claim 24). Hence, Hirni does not anticipate claim 14. The examiner relies on the disclosure of Hayashi for the admittedly missing disclosure, however, Hayashi utterly fails to teach disclose or suggest such a limitation. Thus, as Hayashi fails to teach, disclose or suggest the limitation admittedly not taught by Hirni, Appellant respectfully requests withdrawal of the rejection and allowance of the claims in GROUP II for at least this reason.

**ARGUMENT F (ADDRESSING THE CLAIMS OF GROUP I) – THE COMBINATION OF HIRNI AND
HAYASHI IS IMPROPER**

There is no suggestion or motivation to combine Hirni with Hayashi in any way that renders Appellants' claims unpatentable. Without such, the present rejections fail to make a *prima facie* case and should be withdrawn.

The only support for combining Hirni with Hayashi is that they both have something to do with “conversing”. See e.g., Latest Substantive Office Action at p. 2. Simply stated, Hirni discloses a telephone system (i.e., a VOIP system) and Hayashi is a “virtual pet game”. One of ordinary skill in the art would not be motivated to combine the teachings of Hirni and Hayashi to create the methods and systems set forth in the claims at issue. Indeed, suggesting that one of ordinary skill in the art would be motivated to combine a telephone system with a pet game to create the claimed inventions because they are both involved with “conversing” would be tantamount to suggesting that it is obvious to combine an automobile with a train to create an

airplane because in the abstract they all relate to “travel”. Of course, such a basis for supporting the combination is insufficient.

Appellant has on multiple occasions respectfully pointed out to the examiner that there is no motivation or suggestion to combine Hirni with Hayashi in any way that renders the claims at issue unpatentable. In response, the examiner has implicitly noted that neither reference provides such motivation or suggestion to combine. See e.g., Latest Substantive Office Action at p. 2. Rather, in place of a teaching from either Hirni or Hayashi of such motivation or suggestion to combine, the examiner merely offers that “both Hirni et al. and Hayashi are disclosing a method/system that has to do with conversing.” Id. It is true that if abstracted to an arbitrary level any two references disclose the same subject matter. However, one of ordinary skill is not motivated by such abstraction to combine in foresight, rather the abstraction serves only to justify a conclusory approach to Examination. Such a conclusory approach to Examination does not, of course, satisfy the requirements of the law that the “teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Appellant’s disclosure.” MPEP at §2143 citing In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the motivation for the asserted combination is insufficient, Appellant respectfully requests withdrawal of the rejection and allowance of the claims in GROUP III for at least this reason.

CONCLUSION

For at least the reasons set forth above, Appellants respectfully request reversal of the examiner's rejections, and allowance of the claims.

All fees for the appeal have previously been paid, and no additional fees are believed to be required. If additional fees are required, the Commissioner is authorized to charge our Deposit Account No. 50-3897 and is requested to notify us of the same.

Date: January 2, 2009

Respectfully submitted,
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APPENDIX OF CLAIMS
37 C.F.R. § 41(c)(1)(viii)

The claims on appeal read as follow:

2. The network of claim 24, the network further comprising:
an initiator, wherein the initiator is communicably coupled to the central control.
3. The network of claim 2, wherein the initiator is a predictive dialer.
4. The network of claim 24, wherein the central control comprises a set of components, and wherein the set of components is copied to both the first conversation control system and the second conversation control system under direction of the central control.
6. The method of claim 25, wherein the initiator is a predictive dialer.
7. The method of claim 25, the method further comprising:
maintaining components for use by the first and second conversation control systems on a central control; and
updating both the first and second conversation control systems with the components.
8. The method of claim 7, the method further comprising:
determining if a component on the first conversation control system is less recent than a component on the central control.
9. The method of claim 25, wherein the conversation control system comprises:
a computer associated with a database, wherein the database comprises one or more audio files;
a speaker; and
a input device.
10. The method of claim 9, wherein communicating with the recipient comprises:

receiving a first audio signal from the recipient; and outputting the first audio signal via the speaker to a user.

11. The method of claim 10, the method further comprising:

receiving a selection from the user at the input device of the first conversation control system, wherein the selection designates an audio file; and

converting the audio file to a second audio signal; and outputting the second audio signal to the recipient.

12. A method for controlling a network of conversation control systems, the method comprising:

initiating contact with a human recipient via an initiator;

selecting a conversation control system, wherein the conversation control system is accessible to a human operator;

routing information received from the human recipient to the conversation control system;

outputting the information received from the human recipient in the form of an audio communication via an output device of the conversation control system to the human operator;

receiving an indication from the human operator of a preformed script item to respond to the information received from the human recipient; and

presenting the script item to the human recipient.

13. The method of claim 12, the method further comprising

receiving an indication of a script item, wherein the script item is associated with a step of the script.

14. The method of claim 13, the method further comprising:

receiving an indication of a presentation, wherein the presentation controls the form that the script item is presented to the recipient, and wherein the presentation is a logical combination of script items.

15. The method of claim 14, wherein the indicated presentation is a voice presentation.

16. The method of claim 15, wherein the voice presentation is a particular person's voice.

17. The method of claim 16, wherein the person's voice is pre-recorded.

18. The method of claim 14, wherein the indicated presentation is the recipient's language.

19. The method of claim 18, wherein the recipient's language is not the user's language.

20. The method of claim 12, wherein the initiator is a predictive dialer.

21. The method of claim 12, wherein selecting the conversation control system is done by determining which of a plurality of conversation control systems is currently not in use.

22. The method of claim 12, wherein selecting the conversation control system is done by determining which of a plurality of conversation control systems is about to terminate use.

23. The method of claim 12, the method further comprising:
providing a central control, wherein selection of the conversation control system is effectuated by the central control via a computer network.

24. A network of conversation control systems, the network comprising:
a first conversation control system, wherein the first conversation control system includes a plurality of script items formed in a presentation, wherein the first conversation control system is accessible to a first human operator, wherein the first conversation control system is operable to receive input from the first human operator, wherein the input from the first human operator selects one of the plurality of script items, and wherein the first conversation control system is operable to perform the selected one of the plurality of script items to a first human recipient;

a second conversation control system, wherein the second conversation control system includes the plurality of script items formed in the presentation, wherein the second conversation control system is accessible to a second human operator, wherein the second conversation control system is operable to receive input from the second human operator, wherein the input from the second human operator selects one of the plurality of script items, and wherein the second conversation control system is operable to perform the selected one of the plurality of script items to a second human recipient; and

a central control, wherein the central control is communicably coupled to the first and the second conversation control systems.

25. A method for providing information to one or more recipients, the method comprising:

providing a first conversation control system, wherein the first conversation control system includes a computer readable medium associated with the first conversation control system, and wherein the computer readable medium associated with the first conversation control system includes a plurality of preformed script items;

providing a second conversation control system, wherein the second conversation control system includes a computer readable medium associated with the second conversation control system, and wherein the computer readable medium associated with the second conversation control system includes the plurality of preformed script items;

providing an initiator;

communicating with the initiator, wherein a human recipient is contacted;

selecting one of the first conversation control system or the second conversation control system to interact with the human recipient; and

receiving an indication of one of the plurality of preformed script items from a human operator associated with the selected conversation control system; and

communicating with the recipient via the selected conversation control system.

APPENDIX OF EVIDENCE
37 C.F.R. § 41(c)(1)(ix)

None.

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RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41(c)(1)(x)

None.